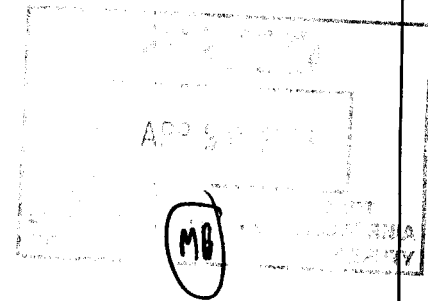


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7 Attorneys for Plaintiff
UNITED STATES OF AMERICA



8
9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

08 CR 1340 -JAH

11 UNITED STATES OF AMERICA,)
12)
Plaintiff,)
13)
v.)
14 JOSE JAVIER RIVERA-GARCIA (1),)
15)
Defendant.)

Magistrate Case No. 08MJ1140

**STIPULATION OF FACT AND JOINT
MOTION FOR RELEASE OF
MATERIAL WITNESS(ES) AND
ORDER THEREON**

(Pre-Indictment Fast-Track Program)

17 **IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES
18 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Caleb E.
19 Mason, Assistant United States Attorney, and defendant JOSE JAVIER RIVERA-GARCIA, by and
20 through and with the advice and consent of Donald A. Nunn, counsel for defendant, that:

21 1. Defendant agrees to execute this stipulation on or before the first preliminary hearing
22 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,
23 intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead
24 guilty to the pre-indictment information charging defendant with a non-mandatory minimum count
25 of Transportation of Aliens and Aiding and Abetting, in violation of 8 U.S.C. §1324(a)(1)(A)(ii)
26 and (v)(II).

27 //

28 CEM:lg:4/17/08

1 2. Defendant acknowledges receipt of a plea agreement in this case and agrees to
2 provide the signed, original plea agreement to the Government not later than five business days
3 before the disposition date set by the Court.

4 3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or
5 before **May 15, 2008**.

6 4. The material witnesses, Roberto Becerra-Barrera, Jorge Ramirez-Ibarra and Luis
7 Manuel Hernandez-Ramirez, in this case:

8 a. Are aliens with no lawful right to enter or remain in the United States;

9 b. Entered or attempted to enter the United States illegally on or about
10 April 11, 2008, with defendant as their footguide;

11 c. Were found in a vehicle driven by codefendant Jose Luis Cuevas-Miramontes
12 on Interstate 8 off of Mollison Street exit, in or near San Diego, California, and that defendant knew
13 or acted in reckless disregard of the fact that they were aliens with no lawful right to enter or remain
14 in the United States;

15 d. Were paying or having others pay on their behalf \$1,500-\$2,000 to others to
16 be brought into the United States illegally and/or transported illegally to their destination therein;
17 and,

18 e. May be released and remanded immediately to the Department of Homeland
19 Security for return to their country of origin.

20 5. After the material witnesses are ordered released by the Court pursuant to this
21 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any
22 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any
23 proceeding, including, but not limited to, motion hearings, trial, sentencing, appeal or collateral
24 attack, that:

25 a. The stipulated facts set forth in paragraph 4 above shall be admitted as
26 substantive evidence;

27 b. The United States may elicit hearsay testimony from arresting agents

1 regarding any statements made by the material witness(es) provided in discovery, and such
2 testimony shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements
3 against interest of (an) unavailable witness(es); and,

4 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),
5 "testimonial" hearsay statements are not admissible against a defendant unless defendant confronted
6 and cross-examined the witness(es) who made the "testimonial" hearsay statements, defendant
7 waives the right to confront and cross-examine the material witness(es) in this case.

8 6. By signing this stipulation and joint motion, defendant certifies that defendant has
9 read it (or that it has been read to defendant in defendant's native language). Defendant certifies
10 further that defendant has discussed the terms of this stipulation and joint motion with defense
11 counsel and fully understands its meaning and effect.


12 Based on the foregoing, the parties jointly move the stipulation into evidence and for the
13 immediate release and remand of the above-named material witness(es) to the Department of
14 Homeland Security for return to their country of origin.

15 It is STIPULATED AND AGREED this date.

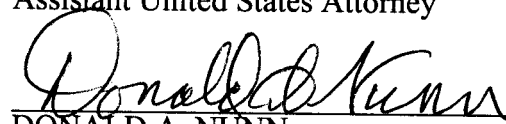
16 Respectfully submitted,

17 KAREN P. HEWITT
18 United States Attorney


19 Dated: 4/20/08.

20 for 
CALEB E. MASON
Assistant United States Attorney

21 Dated: 4/22/08.

22 
DONALD A. NUNN
Defense Counsel for
JOSE JAVIER RIVERA-GARCIA

23 Dated: 04-22-08.

24 
JOSE JAVIER RIVERA-GARCIA
25 Defendant
26
27
28

ORDER

Upon joint application and motion of the parties, and for good cause shown,

THE STIPULATION is admitted into evidence, and,

IT IS ORDERED that the above-named material witness(es) be released and remanded forthwith to the Department of Homeland Security for return to their country of origin.

SO ORDERED.

Dated: 4/29/08.


United States Magistrate Judge